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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 521

DIANA KEARNY POWELL, *Petitioner*

v.

NATIONAL SAVINGS AND TRUST COMPANY, Successor Trustee; ANNE T. OGDEN and LESTER H. SELLERS, Executors of the Estate of Luey Powell, deceased; ANNETTE I. POWELL, ADÈLE POWELL MARBUT, THELMA COX POWELL, ROBERT RANDOLPH POWELL JR., MARY POWELL DAVIDSON, MARTHA POWELL NISTLER, *Respondents*

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

DIANA KEARNY POWELL, *Attorney, Petitioner pro se*
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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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No. 521

DIANA KEARNY POWELL, *Petitioner*

v.

NATIONAL SAVINGS AND TRUST COMPANY, Successor Trustee; ANNE T. OGDEN and LESTER H. SELLERS, Executors of the Estate of Lucy Powell, deceased; ANNETTE I. POWELL, ADELE POWELL MARBUT, THELMA COX POWELL, ROBERT RANDOLPH POWELL JR., MARY POWELL DAVIDSON, MARTHA POWELL NISTLER, *Respondents*

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petitioner prays for rehearing under Rule 58(2) of this Court of the Order entered December 18, 1961, denying Petitioner's prayer that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above cause on July 31, 1961.

INTERVENING CIRCUMSTANCES AND GROUNDS NOT PREVIOUSLY PRESENTED

Motion for Summary Judgment in this cause was filed December 21, 1961, in the United States District Court for the District of Columbia by Emilia L. Powell, a party-defendant (Rec. 25, 32, 33) on grounds that under the ruling of the Court of Appeals the residuary estate of testatrix Diana Kearny Powell vested in fee at the time of her death, that a condition subsequent divesting the fee is repugnant to the nature of the estate granted, and that therefore the entire residuary estate vested absolutely in fee in William Glasgow Powell alone under the clauses of the will set forth below, vesting on his death in this movant as his widow and sole beneficiary of his will.

The Third and Fourth clauses of the will (Rec. 9) provide:

> ". . . I give and devise the above described property in Cape May, New Jersey, and in St. Louis, Missouri, unto my son William Glasgow Powell, and his heirs forever, . . ."

and,

> "*Fourth*: All the rest and residue of my estate, real, personal and mixed, of whatsoever kind and description and wheresoever situate, of which I now am or at the time of my death may be seized and possessed, I give, devise and bequeath unto my said son William Glasgow Powell, and his heirs forever, . . ."

If the above-cited clauses of the will are not construed as vesting the bare legal title to stay the fee

until termination of the trust by the death of the life beneficiary, then they must be construed literally as vesting the fee in William Glasgow Powell alone to the exclusion of all remaindermen as well as the life beneficiaries, *ab initio*.

Motion for Summary Judgment in this cause was filed January 6, 1962, in the United States District Court for the District of Columbia by Elizabeth Powell Adams, a party-defendant (Rec. 32, 33) on grounds that the entire corpus of the estate of testatrix Diana Kearny Powell vested in this movant in fee. Under the rulings of the United States District Court (Pet 2a) and the United States Court of Appeals for the District of Columbia Circuit (Pet. 6a) that each of the five children of testatrix took a fee interest at the death of testatrix, subject to being divested by their death with issue surviving, she is entitled as next-of-kin through her father, a half brother of the five children of testatrix (Rec. 32, 33) to the vested fee which descended to her on the death of each. The share of William Glasgow Powell, who died with surviving issue, thereby was divested of his interest, which could not pass through him to his issue, and so reverted to the estate and to this movant in fee.

WHEREFORE, Petitioner respectfully submits that these Motions are substantial intervening circumstances showing that the decisions of the Courts below deprive petitioner of rights clearly vested in her alone under the unambiguous terms of her grandmother's will (Pet. 5a) in violation of Amendment Five of the Constitution of the United States and in conflict with the decision of this Court in *Ochoa* v. *Hernandez*, 250 U.S. 139, 161, 57 L. ed. 1427, 33 S. Ct. 1033, war-

ranting reconsideration of the Petition and review by this Court.

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Attorney, Petitioner pro se

Certificate of Good Faith

I, Diana Kearny Powell, the Petitioner herein and a member of the Bar of the Supreme Court of the United States, hereby certify that the foregoing Petition for Rehearing of Petition for Writ of Certiorari is presented in good faith and not for delay, and that it is restricted to intervening circumstances of substantial effect, or which to the extent that they were available to petitioner, were not previously presented.

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